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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Albania, Angola,* Argentina,* Austria,* Belgium, Bosnia and Herzegovina,* Brazil, Bulgaria,* Chile,* Congo, Croatia, Cyprus,* Czechia,* Denmark,* Ecuador, Estonia,* Georgia, Germany, Haiti,* Honduras,* Iceland,* Ireland,* Kenya, Latvia, Liechtenstein,* Lithuania,* Luxembourg,* Mali,* Mexico,* Montenegro,* Netherlands, Norway,* Panama, Paraguay, Peru,* Poland,* Portugal, Republic of Moldova,* Romania,* Serbia,* Slovenia, Spain,* Sweden,* Switzerland, the former Yugoslav Republic of Macedonia,* Timor-Leste,* Tunisia, Ukraine:* draft resolution

34/... The right to privacy in the digital age

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities,

Recalling the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming the Vienna Declaration and Programme of Action,

Recalling General Assembly resolutions 68/167 of 18 December 2013, 69/166 of 18 December 2014 and 71/199 of 19 December 2016 on the right to privacy in the digital age, and 45/95 of 14 December 1990, on guidelines for the regulation of computerized personal data files, Human Rights Council decision 25/117 of 27 March 2014 and Council resolution 28/16 of 26 March 2015 on the right to privacy in the digital age, and all other relevant resolutions of the Council, in particular resolutions 33/2 of 29 September 2016 on the safety of journalists, resolution 12/16 of 2 October 2009 and all other resolutions on the right to

* State not a member of the Human Rights Council.

freedom of opinion and expression, and resolutions 20/8 of 5 July 2012, 26/13 of 26 June 2014 and 32/13 of 1 July 2016, on the promotion, protection and enjoyment of human rights on the Internet,

Welcoming the work of the Office of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age, noting with interest its report thereon, and recalling the panel discussion on the right to privacy in the digital age held during the twenty-seventh session of the Human Rights Council,[1]

Welcoming also the work of the Special Rapporteur on the right to privacy, and taking note of the reports of the Special Rapporteur on the right to privacy,[2] of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism[3] and of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,[4]

Noting with appreciation general comment No. 16 of the Human Rights Committee on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation, while also noting the vast technological leaps that have taken place since its adoption and the need to discuss the right to privacy in view of the challenges of the digital age,

Noting that, in its general comment No. 16, the Human Rights Committee recommends that States take effective measures to prevent the unlawful retention, processing and use of personal data stored by public authorities and business enterprises,

Recalling that the General Assembly in its resolution 71/199 encouraged the Human Rights Council to remain actively seized of the debate on the right to privacy in the digital age, with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy, and to consider holding an expert workshop as a contribution for a future report of the United Nations High Commissioner for Human Rights on this matter,

Recognizing the need to further discuss and analyse, on the basis of international human rights law, issues relating to the promotion and protection of the right to privacy in the digital age, procedural safeguards, effective domestic oversight and remedies, the impact of surveillance on the right to privacy and other human rights, as well as the need to examine the principles of legality, necessity and proportionality in relation to surveillance practices,

Recognizing also that the discussion on the right to privacy should be based upon existing international and domestic legal obligations, including international human rights law, and relevant commitments, and should not open the path for undue interference with an individual's human rights,

Reaffirming the human right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, and recognizing that the exercise of the right to privacy is important for the realization of other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association, and is one of the foundations of a democratic society,

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[1] See A/HRC/28/39.

[2] A/HRC/31/64, A/HRC/34/60 and A/71/368.

[3] A/HRC/34/61 and A/69/397.

[4] A/HRC/23/40 and Corr.1, A/HRC/29/32, A/HRC/32/38 and A/70/361.

Recognizing that the right to privacy can enable the enjoyment of other rights and the free development of an individual's personality and identity, and an individual's ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association,

Noting that the rapid pace of technological development enables individuals all over the world to use information and communications technology and at the same time enhances the capacity of governments, business enterprises and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights, in particular the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, and is therefore an issue of increasing concern,

Noting also that, while metadata may provide benefits, certain types of metadata, when aggregated, can reveal personal information that can be no less sensitive than the actual content of communications and can give an insight into an individual's behaviour, social relationships, private preferences and identity,

Noting with concern that automatic processing of personal data for individual profiling may lead to discrimination or decisions that otherwise have the potential to affect the enjoyment of human rights, including economic, social and cultural rights, and recognizing the need to further discuss and analyse these practices on the basis of international human rights law,

Expressing concern that individuals often do not provide their free, explicit and informed consent to the re-use, sale or multiple re-sales of their personal data, as the collecting, processing and sharing of personal data, including sensitive data, has increased significantly in the digital age,

Emphasizing that unlawful or arbitrary surveillance and/or interception of communications, including when undertaken extraterritorially, as well as the unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the right to privacy, can interfere with other human rights, including the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association, and may contradict the tenets of a democratic society, including when undertaken on a mass scale,

Emphasizing also that States must respect international human rights obligations regarding the right to privacy when they intercept digital communications of individuals and/or collect personal data and when they require disclosure of personal data from third parties, including business enterprises,

Recalling that business enterprises have a responsibility to respect human rights as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, and that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State,

Deeply concerned at the negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights,

Noting that, while concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law,

Emphasizing that, in the digital age, technical solutions to secure and to protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of human rights, in particular the rights to privacy, to freedom of expression and to freedom of peaceful assembly and association,

Emphasizing also that an open, secure, stable, accessible and peaceful information and communications technology environment is important to the enjoyment of human rights, including the right to privacy,

Noting that violations and abuses of the right to privacy in the digital age may affect all individuals, including with particular effects on women, as well as children and persons in vulnerable situations, or marginalized groups,

Noting with deep concern that, in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms frequently face threats and harassment and suffer insecurity as well as unlawful or arbitrary interference with their right to privacy as a result of their activities,

Noting that the prevention and suppression of terrorism is a public interest of great importance, while reaffirming that States must ensure that any measures taken to combat terrorism are in compliance with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law,

1. *Reaffirms* the right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights;

2. *Recalls* that States must ensure that any interference with the right to privacy complies with the principles of legality, necessity and proportionality;

3. *Recognizes* the global and open nature of the Internet and the rapid advancement in information and communications technology as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals;

4. *Affirms* that the same rights that people have offline must also be protected online, including the right to privacy;

5. *Calls upon* all States:

(*a*) To respect and protect the right to privacy, including in the context of digital communications;

(*b*) To take measures to put an end to violations of the right to privacy and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law;

(*c*) To review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law;

(*d*) To establish or maintain existing independent, effective, adequately resourced and impartial judicial, administrative and/or parliamentary domestic oversight

mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data;

(*e*) To provide individuals whose right to privacy has been violated by unlawful or arbitrary surveillance with access to an effective remedy, consistent with international human rights obligations;

(*f*) To develop or maintain and implement adequate legislation, with effective sanctions and remedies, that protects individuals against violations and abuses of the right to privacy, namely through the unlawful or arbitrary collection, processing, retention or use of personal data by individuals, governments, business enterprises and private organizations;

(*g*) To further develop or maintain, in this regard, preventive measures and remedies for violations and abuses regarding the right to privacy in the digital age that may affect all individuals, including where there are particular effects for women, as well as children and persons in vulnerable situations or marginalized groups;

(*h*) To promote quality education and lifelong education opportunities for all to foster, inter alia, digital literacy and the technical skills required to effectively protect their privacy;

(*i*) To refrain from requiring business enterprises to take steps that interfere with the right to privacy in an arbitrary or unlawful way;

(*j*) To consider appropriate measures that would enable business enterprises to adopt adequate voluntary transparency measures with regard to requests by State authorities for access to private user data and information;

(*k*) To develop or maintain legislation, preventive measures and remedies addressing harm from the sale or multiple resale or other corporate sharing of personal data without the individual's free, explicit and informed consent;

6. *Encourages* all States to promote an open, secure, stable, accessible and peaceful information and communications technology environment based on respect for international law, including the obligations enshrined in the Charter of the United Nations and human rights instruments;

7. *Encourages* all relevant stakeholders to participate in informal dialogues about the right to privacy and welcomes the contribution of the Special Rapporteur on the right to privacy to this process;

8. *Calls upon* all business enterprises to meet their responsibility to respect human rights in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, including the right to privacy in the digital age, and to inform users about the collection, use, sharing and retention of their data that may affect their right to privacy and to establish transparency and policies that allow for the informed consent of users, as appropriate;

9. *Encourages* business enterprises to work towards enabling technical solutions to secure and protect the confidentiality of digital communications, which may include measures for encryption and anonymity, and calls upon States not to interfere with the use of such technical solutions, with any restrictions thereon complying with States' obligations under international human rights law;

10. *Requests* the United Nations High Commissioner for Human Rights to organize, before the thirty-seventh session of the Human Rights Council, an expert workshop with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy in the digital age,

including the responsibility of business enterprises in this regard, to prepare a report thereon and to submit it to the Council at its thirty-ninth session;

11. *Encourages* States, relevant United Nations agencies, funds and programmes, intergovernmental organizations, treaty bodies, the special procedures, regional human rights mechanisms, civil society organizations, academia, national human rights institutions, business enterprises, the technical community and other relevant stakeholders to participate actively in the expert workshop;

12. *Decides* to continue its consideration of the matter under the same agenda item.